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SUBJECT: GERMAN TIP CONVICTION AND SENTENCING STATISTICS

REF: A. BERLIN 601

[1](#)B. 05 STATE 229099
[1](#)C. FISHER/CONWAY EMAIL 4/20/2006

[1](#)1. (U) This message is sensitive but unclassified. Please handle accordingly.

Summary

[1](#)2. (SBU) German prosecutors seek maximum sentences for traffickers by whatever means they can, according to a recent Max Planck Criminological Institute study. For TIP crimes, this means the Ministry of Justice's published trafficking statistics do not fully capture TIP sentences. In some cases, prosecutors focus on the non-TIP related crimes of traffickers if they determine the chances of a successful prosecution are higher than proceeding with TIP charges. Moreover, MOJ statistics do not include cases where traffickers were convicted on multiple charges and one of the charges, such as rape or murder, carried a higher maximum penalty. In cases that do fall in the "trafficking" category as the MOJ has it set up, statistics report only the sentence handed down for the trafficking violation and not the aggregate sentence for all convictions. Therefore the published trafficking statistics under-represent the total number of traffickers sentenced and under-report the severity of sentences handed down. The Max Planck study notes trafficking sentences were generally more severe than those handed down for similarly serious crimes. The MOJ statistics also give the mistaken impression that a high percentage of traffickers receive suspended sentences. However, the Max Planck study supports German prosecutors' claims that those who receive suspended sentences often played auxiliary roles in the overall trafficking operation, e.g., telephone operators, whereas TIP ringleaders received the harshest sentences. END SUMMARY.

[1](#)3. (U) A study released in March 2006 by the Max Planck Criminological Institute indicates statistics on trafficking convictions compiled by the German Ministry of Justice do not fully capture the extent to which Germany prosecutes traffickers or the severity of sentences handed down. The study analyzed court documents from trafficking cases between 1996 and 2002; conviction data for trafficking cases listed in the non-public Federal Central Register between 1996 and 2000; 49 court files of trafficking investigations from ten different federal states in the period 1994-2002; responses gathered from written questionnaires completed by 550 police, prosecutors, and judges; and personal interviews with police, prosecutors, and judges.

Most Traffickers Charged with Non-TIP Crimes

14. (SBU) According to the study, courts convicted individuals on charges of trafficking in only 21 percent of trafficking-related court cases between 1996 and 2002. However, in 72 percent of the trafficking-related cases (22 percent pre-trial; 50 percent during the actual trial) prosecutors dropped the trafficking charge and, instead, charged suspected traffickers with human smuggling, tax evasion, or other crimes in order to improve the chances of successful prosecution. The study also notes police reported shifting the focus of approximately one-quarter of trafficking investigations to human smuggling or other violations before the case was even assigned to a prosecutor.

According to Petra Leister, a senior prosecutor who has spent the past eight years prosecuting TIP cases in Berlin, prosecutors tend to focus on outcomes and, therefore, pursue charges which are easiest to prove and will result in jail time. For instance, she said, human smuggling is much easier to prove than TIP. Leister noted the frequent unfortunate lack of credible testimony from victims plays a key role in prosecutors' decisions to charge traffickers with other crimes.

15. (SBU) The Max Planck study reached similar conclusions, stating successful prosecution of traffickers often hinges on victim testimony. To prove a trafficking crime has been committed, prosecutors must convince the court the accused exploited or coerced the victim by violence or threat of violence. A case can be made or broken, therefore, on a victim's willingness to testify or a victim's credibility on the witness stand, including under possibly unpleasant cross-examination. Respondents cited psychological pressure and fear of retribution as key factors in victims' refusal to testify. When victims do testify, Leister explained, their

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testimony is often inconsistent, sometimes contradicts testimony offered by other victims, and, as a result, is easily picked apart by defense attorneys. (NOTE: Germany has well established victim protection programs to facilitate victim testimony)- these include access to court-appointed translators, temporary housing, and counseling services. That said, law enforcement and NGO representatives often state that the trauma TIP victims have suffered makes some of them unwilling or unable to testify despite all the support they receive. END NOTE.)

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Statistics Do Not Reflect Severity of Sentences
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16. (SBU) According to Guntram Hahne, another senior Berlin prosecutor, the MOJ's methodology does not consider multiple convictions or tally aggregate sentences for multiple convictions. As a result, MOJ statistics fail to capture the full scope of German efforts to bring traffickers to justice or the actual penalties handed down. To address shortcomings in the MOJ's statistical analysis, the Max Planck study reviewed a second set of data published in the Federal Central Register (BZR), a non-public register compiled by the Federal Prosecutor General that lists legally binding criminal court convictions. The BZR data revealed 87 percent of persons convicted of aggravated trafficking between 1996 and 2000 were also convicted on other offenses. According to Leister, prosecutors often charge traffickers with drug or weapons crimes, human smuggling, tax evasion, and forgery. As a result, the total prison sentence a trafficker receives is generally underreported because MOJ statistics only list the sentence handed down for the actual TIP conviction and not/not the aggregate sentence for multiple convictions.

17. (SBU) Other MOJ statistical conventions also mask TIP convictions: the MOJ statistics group cases involving multiple convictions under the conviction with the highest maximum penalty (not/not the highest sentence actually handed

down) and, again, list only the sentence for that conviction, rather than the aggregate sentence. For instance, if an individual is convicted of both TIP and rape, MOJ lists the conviction as rape, not TIP. According to the BZR data used in the Max Planck study, 13 percent of persons convicted on trafficking charges were also convicted for rape. However, these convictions are not listed among TIP convictions in MOJ statistics. After factoring in the high number of multiple convictions, along with the high precedence of convictions on non-TIP charges, the Max Planck study concluded German efforts to prosecute traffickers are "relatively vigorous" and, in comparison to other similarly serious crimes, characterized the rate of non-suspended prison sentences for traffickers as being "strikingly" high.

Number of Suspended Sentences Misleading

18. (SBU) The Max Planck study supports what German prosecutors have long maintained: suspended sentences are generally handed down to individuals, such as drivers and telephone operators, who played an auxiliary role in the crime. The study's analysis of BZR data revealed MOJ statistics group together and do not differentiate between convictions for trafficking, aiding and abetting trafficking, and attempted trafficking. Indeed, the study revealed 11 percent of those the MOJ statistics refer to as "traffickers" were actually not traffickers, but auxiliary personnel convicted on charges of aiding and abetting and nine percent for attempted trafficking. Of the remaining 80 percent, Leister explained, courts generally hand down suspended sentences to drivers, telephone operators, absentee property owners, and, less frequently, to individuals who confess and subsequently agree to testify against traffickers or who, prior to their arrest, provided some sort of assistance to TIP victims. Leister said TIP ringleaders receive the harshest sentences or, in the absence of victim testimony, are charged with other crimes.

19. (SBU) Leister confirmed it is standard German practice for judges to suspend prison sentences of two years or less for all crimes, not just TIP crimes. She explained those who receive suspended sentences are generally required to perform community service, pay penalties, and/or meet regularly with a parole officer. Furthermore, German authorities enter the names/fingerprint records of these individuals into law enforcement databases.

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